IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4055 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF INDRAPAL RAMRAJ- HONSLAPRASAD INDRAPAL

Versus

GOSWAMI TILKAYAT

Appearance:

1. Special Civil Application No. 4055 of 1990
MR BJ JADEJA for Petitioners No. 1-1/2
SERVED BY RPAD - (R) for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 07/03/2002

CAV.JUDGEMENT

1 This is a petition filed under Article 227 of the Constitution of India challenging the order dated 20/10/1989 passed by Gujarat Revenue Tribunal in Revision

2 One Indrapal Ramraj, since deceased, made an application on 3/1/1981 under Section 70(b) of the Bombay Tenancy & Agricultural Lands Act,1948 ('the Act') to the Mamlatdar & ALT seeking declaration that the petitioner was a tenant of the land bearing Survey No.11 admeasuring 2 Acres at village Fulpada, Taluka Choryasi, District Surat. The Mamlatdar & ALT after holding necessary inquiry rejected the application by judgment and order dated 4/12/1983. The petitioner challenged the same before the Assistant Collector, Surat who allowed the appeal by judgment and order dated 26/3/1985. The respondent land owner preferred revision application before the Gujarat Revenue Tribunal and the same was allowed by judgment and order dated 20/10/1989. Thus, the original order passed by the Mamlatdar & ALT holding that the petitioner was not the tenant of the described land came to be upheld.

3 It is against this order of the Tribunal that the present petition has been preferred. Mr.B.J.Jadeja, learned Advocate, appearing on behalf of the petitioner assailed the order of the Tribunal on various grounds. However, the main emphasis was on rent receipt regarding payment of ganot or cash rent to the land lord. Zerox copies of the various receipts have been produced collectively at Annexure "D". According to Mr.Jadeja, once the petitioner had made out prima facie case that the petitioner was paying rent , it was not open to the authorities and the Tribunal to hold that the petitioner was not tenant. Mr.Jadeja emphatically stated that the petitioner was yet in possession of the land and was cultivating the land.

4 The Tribunal has after hearing both the sides held that the burden to prove that the petitioner is a tenant would lie on the tenant himself when the tenant is the applicant under Section 70(b) of the Act. That the facts on record show that the petitioner's name does not appear in the record of rights though it was contended in application that the petitioner had been cultivating land since about 40 years. The Tribunal has further found that there is no evidence about irrigating land and cultivation of paragrass. On behalf of the applicant one Shri Amarchand, Power of Attorney Holder had deposed before the Mamlatdar and in cross-examination had agreed to the effect that the petitioner did not own any agricultural implements and the land was being cultivated through hired labour. The Tribunal has found that there is no evidence of any hiring of labour nor is there any

evidence about the possession of the land. That the rent receipts produced by the petitioner before the Mamlatdar and before the Tribunal pertained to a period between 1952 to 1956 (though the Tribunal has stated upto 1960) and there is no evidence of possession or payment of rent on and from 1961 onwards till the date of the decision of the Tribunal.

5. In view of the aforesaid finding of fact recorded by the Tribunal, it is not possible to interfere with the finding and conclusion of the Tribunal that the petitioner had not been able to establish his tenancy. The law is well settled that the jurisdiction of the High Court under Article 227 is not appellate but supervisory. The said jurisdiction can be exercised and order of the lower Court/Tribunal can be set aside only when an error of jurisdiction or flagrant violation of law is shown to have been committed by the Tribunal. It is not possible to interfere with a finding of fact recorded by the Tribunal unless it is shown that such finding is perverse i.e. there is no evidence to support the said finding.

6. The petition therefore fails. Rule is discharged. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt